

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
FOREST JACOB SHIELDS,
Defendant.

NO. 2:16-CR-00012-JLQ

MEMORANDUM OPINION;
ORDER REJECTING PLEA
AGREEMENT; SETTING TRIAL AND
PRETRIAL DEADLINES; DECLARING
EXCLUDABLE TIME

***** USM ACTION REQUIRED *****

On July 18, 2016, the court held a hearing pursuant to Fed. R. Crim. P. 11(c)(3) for consideration of the acceptance or rejection of the Fed.R.Crim.P. 11(c)(1)(C) Plea Agreement submitted for the court's consideration at the time of the entry of the Defendant's pleas of guilty to Count I and Count III of the Indictment dated January 20, 2016. Defendant was present in custody represented by Andrea George of the Federal Defenders of Eastern Washington and Idaho. Assistant United States Attorney Caitlin Baunsgard appeared for the Government. This Order memorializes and supplements the court's oral rulings.

The Indictment charged the Defendant with Possession with Intent to Distribute 50 Grams or More of Pure Methamphetamine, in violation of 21 U.S.C. § 841(a)(1), and Possession of a Firearm in Furtherance of Drug Trafficking, in violation of 18 U.S.C. § 924(c). Defendant pled guilty on May 25, 2016, pursuant to a Fed.R.Crim.P. 11(c)(1)(C) Plea Agreement. The court accepted the guilty pleas but reserved ruling on the acceptance

1 or rejection of the Plea Agreement until after a review of the Presentence Report. *See*
2 Fed.R.Crim.P. 11(c)(3)(A). The Plea Agreement allowed the Defendant to withdraw his
3 pleas of guilty if the court rejected the Plea Agreement or imposed sentences totaling more
4 than 204 months of confinement, being 144 months on Count 1 and a mandatory
5 minimum consecutive sentence of 60 months on Count 3.

6 On July 6, 2016, the court held a reported telephone conference with counsel and
7 United States Probation Officer Kennicutt in which the court alerted counsel to its doubts
8 as to the acceptance of the Plea Agreement. The court pointed out the Plea Agreement
9 provided for a sentence on Count 1 of 144 months, less than the Guideline Range of 151-
10 188 months. The recommendation of the Probation Officer was for a sentence of 188
11 months on Count 1 plus the additional 60 month mandatory sentence on Count 3
12 stipulated to in the Plea Agreement for a total sentence of 248 months. Without the Plea
13 Agreement, the Defendant was subject to a sentence of mandatory life imprisonment
14 without parole pursuant to 21 U.S.C. § 841(b)(1)(A) by reason of the Defendant having
15 been previously convicted of two felony drug offenses. The Plea Agreement in paragraph
16 7(b) provided for withdrawal of the §851 Informations alleging the prior drug convictions.
17 Those withdrawals, in and of themselves, were not the basis for the court's rejection of the
18 Plea Agreement, but the below-Guidelines Range prison sentences even after the
19 withdrawal of the § 851 Informations caused the court to conclude that such a resolution
20 was unreasonable and one the court should not accept.

21 The Presentence Report concluded the Defendant's Criminal History points totaled
22 32, some two and one-half times the Criminal History points of 13 required to place him
23 in the highest Criminal History Category VI. Besides the drug convictions, the
24 Defendant's criminal history includes assaults, numerous attempts to evade police
25 vehicles, and a pending murder charge. The Defendant admittedly shot another person
26 involved in a drug transaction, although the Defendant, through counsel, has alleged the

1 shot was fired in self-defense. The murder charge was the basis for the issuance of the
2 warrant which led to the arrest and the instant charges against the Defendant. At a
3 minimum, at the time of that shooting the Defendant was armed with a firearm in
4 connection with another proposed felony drug transaction. As stated by the court at the
5 July 18, 2016 hearing, the Probation Officer concluded the Defendant has been
6 incarcerated in Washington State institutions seven different times. The Defendant
7 committed new offenses on an average of 66 days after each release. The longest period
8 between the Defendant's release from custody and his rearrest was 120 days.

9 At the July 6, 2016, telephonic conference, counsel stated their positions as to why
10 the court should accept the Plea Agreement. The court advised counsel they would be
11 given, and were given, further opportunity to argue the matter on July 18, 2016.

12 It is within the court's discretion to accept or reject a Plea Agreement. *In re*
13 *Morgan*, 506 F.3d 705, 709 (9th Cir. 2007). "[A] district court properly exercises its
14 discretion when it rejects a plea agreement calling for a sentence the court believes 'is too
15 lenient or otherwise not in the public interest' in light of the factual circumstances specific
16 to the case." *Id.* at 712 (quoting in part *Ellis v. United States District Court*, 356 F.3d
17 1198, 1209 (9th Cir. 2004) (en banc)). If the court chooses to reject the Plea Agreement, it
18 must do so in whole, rejecting the entire Plea Agreement rather than in a "piecemeal"
19 manner. *Id.* at 708-09.

20 The court considered the unique and specific factual circumstances of this case,
21 including the Defendant's lack of parental guidance. The court considered the factors set
22 forth in 18 U.S.C. § 3553(a). The Defendant's criminal history speaks for a long prison
23 sentence, certainly above the low end of the Guidelines, assuming the previously filed
24 § 851 prior drug conviction Informations mandating life imprisonment were withdrawn by
25 the Government. The court rejected the Plea Agreement *en toto*. This court certainly has
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1 no categorical policy for or against Fed.R.Crim.P. 11(c)(1)(C) Plea Agreements and has
2 accepted most of the proffered 11(c)(1)(C) Agreements in cases assigned to this court.

3 Counsel for the Defendant argued the court should consider the sentence imposed
4 by it in *U.S. v. McQueen*, No. 14-CR-00031-JLQ, as being a comparable circumstance.
5 While the court is not bound to impose the same sentence in one case as in another, it is
6 the policy of this court to avoid “unwarranted sentence disparities among defendants with
7 similar records who have been found guilty of similar conduct.” 18 U.S.C. §3553(a)(6).
8 The court reviewed the offense conduct, criminal history, and sentence in the *McQueen*
9 matter. The *McQueen* case Criminal History and Guideline Range is in contrast to that
10 herein. The court in *McQueen* found the true Criminal History to be a Category VI as
11 opposed to the calculated Category IV which left a new Guideline Range of 77-96 months.
12 The court in *McQueen* imposed a sentence of 180 months on the one pending drug charge,
13 contrary to the 144 months on Count 1 proposed in the Plea Agreement in the matter *sub*
14 *judice*.

15 The court was concerned by Defendant’s extensive criminal history, including the
16 four convictions for attempting to elude police officers and other violent offenses. The
17 Defendant’s 32 criminal history points are among the highest this court has encountered.
18 Even if the eluding police officer offenses were not legally considered “crimes of
19 violence” as interpreted by the Supreme Court under the Armed Career Criminal Act, such
20 offenses, in fact, included high risks to police officers and innocent civilians. Although
21 Defendant’s criminal history includes other violent offenses committed as a juvenile, the
22 court has only considered the adult offenses in determining acceptance or rejection of the
23 Plea Agreement.

24 Defendant’s final Offense Level for Count I is 29 with a Criminal History Category
25 VI. Besides dismissal of the two mandatory life imprisonment § 851 Informations, the
26 Plea Agreement calls for a below-Guidelines sentence of 144 months on Count I with the

1 mandatory 60 months on Count III served consecutively. In light of the extensive criminal
2 history, the facts concerning the instant offense, the dismissal of the pending § 851
3 Informations, and the combined sentencing Guideline Range of 211-248 months on the
4 two counts, the court found the below-Guideline 204 months sentence insufficient to
5 fulfill the directions of § 3553(a) including appropriate punishment, deterrent to the
6 Defendant, deterrent to others, and protection of the public.

7 Pursuant to Fed.R.Crim.P. 11(c)(5), the court, on July 18, 2016, informed the
8 parties of its rejection of the Plea Agreement. The court previously advised counsel for the
9 Defendant to be prepared to state whether he wished to withdraw from his plea of guilty if
10 the court rejected the plea agreement. *See* (ECF No. 54). At the hearing, the court advised
11 the Defendant of the option to not continue with his guilty pleas, and further advised him
12 that if he proceeded with a plea of guilty, the court might dispose of his case less
13 favorably than the Plea Agreement specified.

14 Counsel for the Defendant stated he moved to withdraw from the guilty plea. In
15 light of his withdrawal, the court discussed dates with counsel to set this matter for prompt
16 trial. The court also discussed the status of discovery and pretrial motions, including
17 Defendant's Status Report, Request for Discovery, and Motion for Brady Material (ECF
18 No. 37) to which the Government has not yet responded.

19 **IT IS HEREBY ORDERED:**

- 20 1. The Plea Agreement (ECF 43) is **REJECTED** *en toto*.
- 21 2. All pretrial motions, including motions in limine and *Daubert* motions, shall
22 be filed **promptly** when the basis therefore exists and no later than
23 **September 2, 2016**. Any response to a pretrial motion shall be served and
24 filed in accordance with Local Rule 7.1, and no later than **September 9,**
25 **2016**.

3. Requested jury instructions, requested jury *voir dire*, and trial briefs shall be served and filed on or before **September 16, 2016**.
4. All unresolved pretrial motions will be heard at the Pretrial Conference on **Monday, September 26, 2016, at 9:00 a.m.**
5. Jury trial of this matter shall commence on **Monday, October 3, 2016, at 9:00 a.m.** in Spokane, Washington.
6. **The dates set forth above are firm dates. Any request for continuance will not be granted absent a showing of good cause and exceptional circumstances.**
7. The court hereby declares excludable pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(G), the period from **May 24, 2016**, the date the court received the Plea Agreement, to **July 18, 2016**, the date the court rejected the Plea Agreement.
8. While the Defendant's offenses took place in Spokane County and his attorney is based therein, the court has approved of the Defendant being housed pretrial outside of Spokane County. However, in order that trial of this matter not be delayed and in order for defense counsel to adequately prepare for trial, the U.S. Marshal is requested to make every effort to promptly house Defendant in the Spokane County Jail as soon as possible through the conclusion of this matter.
9. As orally ordered, on or before **Monday, July 25, 2016**, the Government shall file and serve its response to Defendant's Status Report, Request for Discovery, and Motion for Brady Material (ECF No. 37).

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1 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and furnish
2 copies to counsel and the U.S. Marshal.

3 Dated July 22, 2016.

4 s/ Justin L. Quackenbush
5 JUSTIN L. QUACKENBUSH
6 SENIOR UNITED STATES DISTRICT JUDGE
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